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UNCLAS STATE 126229

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E.O. 12958: N/A  
TAGS: [PREL](#) [AORC](#) [ODIP](#)  
SUBJECT: DEMARCHE REQUEST: NYC TO IMPOSE TAX ON AU  
PROPERTIES

¶1. (U) This is an action request.

¶2. (SBU) Background. The City of New York notified the U.S. Mission to the United Nations (USUN) on December 2 that both the European Union (EU) and African Union (AU) Observer Missions to the UN are obliged to pay municipal property tax.

After examining the City's claims, the Office of the Legal Adviser agrees the two missions are not clearly entitled to a tax exemption. The EU's situation can likely be remedied with a new executive order. Since the AU's privileges and immunities stem from different statutory authorization, the Department may need to pursue a technical legislative fix in addition to a new executive order. We believe Congress will look favorably upon a technical fix of this nature, although it will take some time to pass the new legislation. The City plans to notify the EU and AU of their new tax liability during the week of December 7.

¶3. (SBU) Using the points contained in para 4, AF PDAS Donald Yamamoto will provide advance notice of the City's intent to the AU Perm Rep in New York at 5:00 p.m. on Wednesday, December 9. End Background.

¶4. (SBU) Action Request: Acting no earlier than PDAS Yamamoto's delivery of notice to the AU Permanent Representative, post is instructed to demarche the African Union Commission at the highest appropriate level using the points in para 5, and deliver the non-paper contained in para 6 which explains the legal circumstances of this situation. Post should not provide a written copy of the points contained in para 5. End Action Request.

¶5. (SBU) Talking points:

-- We understand the City of New York may soon notify your Mission to the United Nations in New York that the AU Mission to the UN is subject to municipal property taxation by the City.

-- Our legal counsel advised us on Friday, December 4, that, under existing legislation and the relevant executive order, the AU Observer Mission to the UN is not entitled to claim a tax exemption, therefore we are unable to contest the City's determination.

-- The Department is researching options to restore the AU Observer Mission's tax exempt status. The Bureau of African Affairs intends to pursue the most expeditious remedy that will resolve the situation.

-- I want to be clear that the present situation does not affect the personal privileges and immunities enjoyed by the AU Mission's staff, which will continue unchanged.

-- Please be assured that we are working to evaluate this situation as quickly as possible. We will keep you updated

as the process proceeds.

-- In the meantime, if your Mission receives a notice or a bill from the City of New York, we understand that you are not required to make immediate payment as the City is seeking tax payments only prospectively.

-- If Raised: The EU's Mission was formed at a much earlier date, and its privileges and immunities are authorized by different legal instruments. We are not certain how we will address the EU's situation, which is different from that of the African Union Mission.

15. (SBU) Non-paper:

Non-paper on the Privileges and Immunities of the UN Observer Mission of the African Union Relevant to New York City Property Tax

22 U.S.C. section 288f-2 provides, in pertinent part, as follows:

Section 288f-2. Organization of African Union; extension of privileges, exemptions, and immunities

(a) The provisions of this subchapter may be extended to the African Union . . . in the same manner, to the same extent, and subject to the same conditions, as they may be extended to a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation.

(b) Under such terms and conditions as the President shall determine, consistent with the purposes of this subchapter, the President is authorized to extend, or enter into an agreement to extend, to the African Union Mission to the United States of America, and to its members, the privileges and immunities enjoyed by diplomatic missions accredited to the United States, and by members of such missions, subject to corresponding conditions and obligations.

-- Subsection (a) thus authorized the President to extend to the African Union (AU) the benefits of the International Organizations Immunities Act (IOIA), which include immunity from property tax only when such tax is imposed by the federal government, not by a state. The President exercised this authority when he issued Executive Order 13377 on April 13, 2005. In relevant part, this EO states: "The African Union is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act." As a result, the AU's Observer Mission to the UN and its personnel enjoy all the privileges and immunities of the IOIA. These benefits do not, however, include an exemption from New York City property tax.

-- Subsection (b), which was added to the statute in 2007, authorized the President to extend privileges and immunities to the newly established bilateral mission of the AU to the United States equivalent to those enjoyed by the bilateral diplomatic missions of foreign States. This the President did by Executive Order 13444, on September 12, 2007, which provides in pertinent part: "By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7(a)(2) of the Department of State Authorities Act of 2006 (Public Law 109-472), I hereby extend to the African Union Mission to the United States of America, and to its members, the privileges and immunities enjoyed by diplomatic missions accredited to the United States, and by members of such missions, subject to corresponding conditions and obligations." As a result of this special legislation and order, the AU's bilateral mission in Washington enjoys, inter alia, exemption from virtually all forms of real property tax, something its UN Observer Mission in New York does not.

-- Because 22 U.S.C. section 288f-2 does not give the President the authority to extend the same benefits to the AU Observer Mission as are enjoyed by the AU bilateral mission, the statute would have to be amended to achieve that end. Once an amended statute gives the President additional authority, he would be in a position to issue a new Executive Order giving those privileges and immunities, including exemption from property taxation, to the AU's Observer Mission in New York.

CLINTON